IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 2934 OF 2004

Yogeshwar Raj. ... Petitioner.

V/s.

Air India Limited & Anr. ... Respondent.

....

Mrs. S.V. Kher i/b RMG Law Associates for the Petitioner.

Mr. J.S. Saluja and Mr. Gajanan Kadam i/b. M.V. Kini & Co. for Respondent No.1.

CORAM : DR. D.Y.CHANDRACHUD,J.

13TH DECEMBER, 2006.

P.C. :

1. The order of the Industrial Tribunal arises upon an application under Section 33(2) (b) of the Industrial Disputes Act, 1947. In paragraph 2 of the order, the Tribunal has observed as follows :-

> " This application has been filed before this Tribunal owing to the fact that Reference NTB-1 of 1990 is pending before this Tribunal. Both the parties concede the point that the pendency of NTB-1 of 1990 is likely to affect the service conditions of the workman. They do not dispute that Company cannot, but file the application for approval in the cases involving the orders of dismissal as a consequence of domestic enquiry to make them legally effective."

2. In Air India Ltd. V/s. Vishal Capoor (2005) 13 Supreme Court Cases 42, the Supreme Court held that the dispute that was pending before the Tribunal in NTB-1/1990 did not relate to Air India and its workmen but to Indian Airlines and its workmen. In the circumstances, the Supreme Court observed as follows :-

> " The dispute which was pending before the Tribunal in Reference No.NTB 1 of 1990 did not relate to a dispute between the First Appellant and its workmen. It related to a dispute between Indian Airlines and its workmen basically on the question whether the latter were entitled to the same terms and conditions of service as the employees of the First Appellant. The award which has since been made on the reference by the Tribunal also records :
>
> " This reference cannot cover any industrial dispute between Air India and its workmen as the order of the Central Government is confined to the dispute between (Indian) Airlines and its workmen."

3. In view of the observations of the Supreme Court, it is now not in dispute between the parties that it was not necessary for Air India to file an approval application in NTB 1 of 1990 which did not

pertain to any dispute between Air India and its workmen. This position has since been followed in two Judgments of learned Single Judges of this Court. The first Judgment is a Judgment dated 13th October 2005 of Mr. Justice S.K. Shah in Air India Limited v/s. Anil R. Joshi in Writ Petition No.2671 of 2002 and the second is a Judgment dated 14th October 2005 of Mr. Justice F.i. Rebello in Air India Limited v/s. Ram Naresh Singh in Writ Petition No.2296 of 2003.

4. In these circumstances, both the Counsel fairly accept the position that it was not necessary for Air India to move an approval application in NTB 1 of 1990.

5. In the circumstances, the approval application upon which the impugned Judgment and Order dated 6th August 2004 is based shall stand disposed of in view of the finding of this Court that it was not necessary for the management of Air India to move an application for approval under Section 33(2)b of the Industrial Disputes Act, 1947.

6. The impugned order dated 6th August 2004 of the Industrial Court does not in the circumstances survive before this Court. It has been stated that the Petitioner has already instituted a substantive Writ Petition (No.1876 of 2001) to challenge the order of dismissal. It is clarified, while disposing of the Petition, that this Court has had no occasion to have regard to the merits of the rights and contentions of the parties which fall for decision in Writ Petition 1876 of 2001.

7. The Petition is accordingly disposed of.